Supreme Court, U.S.
FILED
AUG 1 1996
OFFICE OF THE CLERK

No. 96-34

(2)

In The

Supreme Court of the United States

October Term, 1995

ELLIS N. RATCLIFF, SR. and FRANCIS MAE TAYLOR,

Petitioners,

versus

WILLIAM M. DANIEL, ET AL.,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF OF RESPONDENTS WILLIAM M. DANIEL, SCOTT BRAUD, STEVEN D. NEAL and RANDALL W. METZ IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

T. Allen Usry, Counsel of Record
John F. Weeks, II
Dorothy A. Pendergast
Usry & Weeks
2800 Veterans Memorial Boulevard
Suite 180
Metairie, Louisiana 70002
(504) 833-4600

Counsel for Respondents William M. Daniel, Scott Braud, Steven D. Neal and Randall W. Metz

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

10 pp

QUESTION PRESENTED

Were the defendant law enforcement officers properly granted summary judgment dismissing all claims brought against them pursuant to 42 U.S.C. § 1983 when there was no evidence implicating any of their individual acts or omissions in the alleged homicide by strangulation of the decedent, other than evidence of their mere presence in the same building at or around the time of his death.

TABLE OF CONTENTS

Page

QUESTION PRESENTED..... i

TABLE OF AUTHORITIES..... iii

STATEMENT OF THE CASE..... 1

REASONS FOR DENYING THE WRIT..... 3

CONCLUSION..... 6

TABLE OF AUTHORITIES

Page

Cases

Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986) 4

Statutes and Federal Rules

42 U.S.C. § 1983 ..... 1, 5

U.S. Supreme Court Rule 14.1(a) 1, n.1

Rule 56(c) of the Federal Rules of Civil Procedure 4

Rule 56(f) of the Federal Rules of Civil Procedure 5

STATEMENT OF THE CASE

On Friday, September 27, 1991, Ellis Ratcliff, Jr. ("Ratcliff") was arrested in West Feliciana Parish, Louisiana, and booked into the West Feliciana Parish Jail on charges of possession of a stolen motor vehicle. The next afternoon at about 4:40 p.m. another inmate discovered him hanging by a bed sheet from a ceiling light fixture in a locked cell of which Ratcliff was the only occupant. Efforts by jail personnel and medical emergency technicians to revive him were unsuccessful, and he was pronounced dead without ever regaining consciousness.

In September of 1992, his father brought the present lawsuit over Ratcliff's death; his mother subsequently intervened as a co-plaintiff. The complaint asserted claims under 42 U.S.C. §1983 based on alternative theories either that Ratcliff's death was a deliberate homicide in which the defendant law enforcement officers participated, or that his suicide was the result of constitutionally inadequate medical attention or policies for which they were liable.[1] Supplemental state law claims were also asserted.

Twenty-eight months after the original complaint was filed (and only after the plaintiffs had engaged in extensive discovery including nineteen depositions), defendant deputies Braud, Neal and Metz and their employer, West Feliciana Parish Sheriff Daniel, moved for

---

[1] In their Petition, the plaintiffs contest only the dismissal on summary judgment of their homicide claims brought under 42 U.S.C. §1983. The alternative suicide claim has been abandoned and will not be discussed herein. *See U.S. Supreme Court Rule 14.1(a).*

summary judgment. The District Court granted summary judgment dismissing all federal claims with prejudice and all state law claims without prejudice. (Pet. App. 3)[2]

The Fifth Circuit Court of Appeals affirmed the dismissal by the District Court in a brief unpublished opinion, concluding that there was "no summary judgment evidence sufficient to create a fact issue upon which a finding of constitutional violation *on the part of any of the defendants* could properly rest." (Pet. App. 2, *emphasis added*)

The statement of facts in the Petition contains a startling omission in light of the above cited and emphasized opinion of the Court of Appeals. Nowhere does the Petition suggest a single act or omission by any of the respondents, disputed or otherwise, which would implicate any of them in the alleged homicide. Rather, petitioners' argument is based entirely upon the mere fact Deputies Braud, Neal and Metz were in the same building with Ratcliff at or around the time of his death.

---

[2] In fact, petitioner's subsequently filed a separate complaint in the Middle District of Louisiana under only its asserted diversity jurisdiction, raising state law claims with respect to Ratcliff's death.

REASONS FOR DENYING THE WRIT

I. Petitioners' statement of "Question Presented" identifies no issue calling for review by this Court.

The decision below is not in conflict with any decision of any other Court of Appeals or inconsistent with any decision of this Court. No special or important issues are raised by the Petition, and further review is not warranted. At most, the Petition asserts the misapplication of a properly stated rule of law to the facts in the record; as shown in the following section, even that argument is illfounded.

II. The Fifth Circuit opinion correctly applied the summary judgment standards of Rule 56 of the Federal Rules of Civil Procedure to the factual record before it.

At page 8 of their Petition, petitioners argue that in responding to the motion for summary judgment they "submitted evidence which suggests a violation of Ratcliff's constitutional rights." This argument wholly ignores the basis for the rulings in both lower courts. There was no credible evidence submitted in opposition to the motion which in any way implicated **these named defendants** in the alleged homicide. To the contrary, the uncontradicted evidence shows that Deputy Metz had left the jail more than a half hour before the death occurred and that Sheriff Daniel had not even been present in the jail on that date. The remaining two defendants, Deputies Braud and Neal, were on duty in the jail at the time the hanging was reported, but there is no evidence that either of them had any contact with Ratcliff

at or near the time of his death. Petitioners' conjectures as to the possible involvement of these individuals cannot subvert a properly filed and supported motion for summary judgment.

The summary judgment granted and affirmed below in favor of these law enforcement officers is in full accord with this Court's opinion in *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed. 2d 265 (1986). In *Celotex*, this Court held that summary judgment was properly granted to an asbestos manufacturer where, in opposition to the manufacturer's motion for summary judgment, the plaintiff produced no evidence that the defendant was the manufacturer of the asbestos product to which the plaintiff had been exposed. The following excerpt from that opinion is equally applicable to the present case:

> "In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be 'no genuine issue as to any material fact', since a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial."

(477 U.S. at 323, 106 S.Ct. at 2552, 91 L.Ed. 2d at ___.)

Viewed in the light most favorable to petitioners as the non-moving parties, the evidence presented by them in opposition to summary judgment, at most, creates a genuine issue of material fact as to whether Ratcliff's

death was a suicide or a homicide. However, it is not the function of the trier of fact in this case to determine only whether a homicide did or did not occur. An essential element of the petitioners' case is proof that the law enforcement officers named as defendants in this case were personally involved in bringing about that homicide in some fashion. Despite abundant time for discovery, petitioners are still unable to point to a single fact implicating any of these officers other than their physical presence somewhere in the jail at or close to the time Ratcliff died there.

Petitioners do not complain that they were afforded inadequate time for discovery to oppose the summary judgment motion, nor did they ever seek relief under Rule 56(f) of the Federal Rules of Civil Procedure by filing any affidavit setting forth reasons they were presently unable to justify their opposition. Just like the plaintiffs in *Celotex* who produced some evidence of injury in opposition to summary judgment, but no credible evidence associating the named defendants with that injury, petitioners have failed to produce opposing evidence with respect to the ultimate issue of their case. Summary judgment was properly granted dismissing their claims under 42 U.S.C. §1983.

CONCLUSION

For the foregoing reasons the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

T. ALLEN USRY, Counsel of Record
JOHN F. WEEKS, II
DOROTHY A. PENDERGAST
USRY & WEEKS
2800 Veterans Memorial Boulevard
Suite 180
Metairie, Louisiana 70002
(504) 833-4600

Counsel for Respondents
William M. Daniel, Scott Braud,
Steven D. Neal and Randall W. Metz